

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File Nos.: EB-12-IH-0909
)	EB-FIELDSCR-12-00004030
)	
TOWERSTREAM CORPORATION)	Acct. No.: 201232600017
)	
Licensee of Various Authorizations in the)	FRN: 0007097355
Wireless Radio Service)	0015467749

ORDER

Adopted: May 31, 2013**Released: June 3, 2013**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) and Towerstream Corporation (Towerstream). The Consent Decree terminates an investigation by the Bureau's Investigations & Hearings Division of Towerstream for possible violations of Section 310(d) of the Communications Act of 1934, as amended (Act), and Sections 1.948, 1.17, and 25.102(a) of the Commission's rules (Rules).¹ The Consent Decree also terminates an investigation by the Bureau's Miami Field Office (Field Office) and cancels a related Notice of Apparent Liability for Forfeiture (NAL)² against Towerstream for possible violations of Section 301 of the Act, and Section 25.102(a) of the Rules.³

2. A copy of the Consent Decree negotiated by the Bureau and Towerstream is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree, terminating the investigations, and cancelling the NAL.

4. In the absence of material new evidence relating to this matter, we conclude that our investigations raise no substantial or material questions of fact as to whether Towerstream possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

¹ 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948, 1.17, 25.102(a).

² *Towerstream Corporation, Licensee of Fixed Earth Stations KA407 and KA412, Miami, Florida*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11251 (Miami Office, 2012).

³ 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

⁴ 47 U.S.C. §§ 154(i), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that *Towerstream Corporation, Licensee of Fixed Earth Stations KA407 and KA412, Miami, Florida*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11251 (Miami Office, 2012), **IS CANCELLED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to **Jeffrey M. Thompson, CEO, Towerstream Corporation, 55 Hammarlund Way, Middleton, RI 02842**.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

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TOWERSTREAM CORPORATION)	Acct. No.: 201232600017
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Licensee of Various Authorizations in the)	FRN: 0007097355
Wireless Radio Service)	0015467749

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Bureau) and Towerstream Corporation (Towerstream), by their authorized representatives, hereby enter into this Consent Decree for the purposes of: (a) terminating the investigation by the Bureau's Investigations & Hearings Division into whether Towerstream violated Section 310(d) of the Communications Act of 1934, as amended (Act), and Sections 1.948, 1.17, and 25.102(a) of the Commission's rules (Rules), relating to the transfer of control and/or assignment of Commission authorizations;¹ (b) terminating the investigation by the Bureau's Miami Field Office (Field Office) into whether Towerstream violated Section 301 of the Act² and Section 25.102(a) of the Rules,³ relating to operation of a fixed earth station without Commission authorization; and (c) canceling *Towerstream Corporation, Licensee of Fixed Earth Stations KA407 and KA412, Miami, Florida*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11251 (Miami Office, 2012), arising from the Field Office's investigation of Towerstream.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

¹ 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948, 1.17, 25.102(a).

² 47 U.S.C. § 301.

³ 47 C.F.R. § 25.102(a).

- (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Towerstream is subject by virtue of its business activities.
- (f) “Compliance Plan” means the plan described in this Consent Decree at paragraph 16.
- (g) “Covered Employees” means all employees and agents of Towerstream who perform, or supervise, oversee, or manage the performance of, duties that relate to Towerstream’s responsibilities under the Communications Laws, including Sections 301 and 310(d) of the Act, and Sections 1.948, 1.17, and 25.102(a) of the Rules.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigations” means the investigations commenced by the Bureau’s Investigations & Hearings Division in File Nos. EB-12-IH-0909 and by the Bureau’s Miami Field Office in EB-FIELDSCR-12-00004030, regarding the Company’s possible violations of Sections 301 and 310(d) of the Communications Act of 1934, as amended, and Sections 1.948, 1.17, and 25.102(a) of the Commission’s rules.
- (j) “NAL” means *Towerstream Corporation, Licensee of Fixed Earth Stations KA407 and KA412, Miami, Florida*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11251 (Miami Office, 2012).
- (k) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Towerstream to implement the Compliance Plan.
- (l) “Parties” means Towerstream and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Towerstream” or “Company” means Towerstream Corporation, including all of Towerstream’s subsidiaries and affiliates, and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Section 310(d) of the Act states, “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”⁴ Section 1.948 of the Rules similarly requires Commission consent prior to a transfer of control or assignment of license.⁵

4. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in

⁴ 47 U.S.C. § 310(d).

⁵ 47 C.F.R. § 1.948.

accordance with the Act and with a license granted under the provisions of the Act.⁶ Section 25.102(a) of the Rules similarly requires that “[n]o person shall use or operate apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission.”⁷

5. Section 1.17 of the Rules states that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁸ In 2003, the Commission expanded the scope of Section 1.17 of the Rules to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading.⁹ The Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.¹⁰ Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules.¹¹

6. Towerstream is a publicly traded company that is listed on the New York Stock Exchange, incorporated in Delaware, and based in Providence, Rhode Island.¹² Towerstream states that it is a “competitive entrant in the wireless broadband market.”¹³ Towerstream also states that it provides “affordable and competitive wireless 4G high-speed Internet access to business customers in a number of major markets, including: Providence, New York City, Boston, Los Angeles, Chicago, the San Francisco Bay Area, Miami, Seattle, Dallas/Fort Worth, Philadelphia, Nashville, and Las Vegas/Reno.”¹⁴

7. On January 12, 2012, Towerstream filed an application for Commission consent to the transfer of control of 16 authorizations from Color Broadband Communications Inc. (Color Broadband) to Towerstream. The 16 authorizations consisted of 15 Common Carrier Fixed Point-to-Point Microwave authorizations and one authorization to operate in the 3650-3700 MHz band.¹⁵ Question No. 7(a) of the

⁶ 47 U.S.C. § 301.

⁷ 47 C.F.R. § 25.102(a).

⁸ 47 C.F.R. § 1.17(a)(2).

⁹ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (Amendment of Section 1.17).

¹⁰ *Id.*

¹¹ See *id.* at 4017 (stating that the revision to Section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

¹² See Letter from Donald L. Herman, Jr., Gregory W. Whiteaker and Susan C. Goldhar Ornstein, Counsel for Towerstream Corporation., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 22 (Sept. 20, 2012) (LOI Response).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Form 603, File No. 0005027045 (filed Jan. 12, 2012) (Jan. 12, 2012 Transfer of Control Application). Towerstream also requested consent for the assignment of two pending applications (ULS File Nos. 0005022364 and 0005022365) for Common Carrier Fixed Point-to-Point Microwave authorizations previously filed by Color Broadband Communications, Inc.

application inquired whether the parties had already consummated the transaction referenced therein. Despite the fact that Towerstream had previously completed the acquisition of substantially all of the assets of Color Broadband on December 2, 2011, and issued a press release to that effect, Towerstream answered “No” in response to Question No. 7(a).¹⁶

8. In July 2012, the Commission’s Wireless Telecommunications Bureau, which was responsible for processing Towerstream’s application, referred this matter to the Bureau’s Investigations & Hearings Division (IHD) for possible enforcement action. IHD promptly commenced an investigation by directing a letter of inquiry (LOI) to Towerstream.¹⁷ In its response, Towerstream stated that it had, since April 2010, consummated three additional corporate transactions involving transfers of control or assignments of licenses prior to obtaining Commission consent.¹⁸

9. During the course of our investigation, the Field Office was concurrently investigating Towerstream for other possible violations. On September 26, 2012, the Field Office released the *NAL* concluding that Towerstream had operated a fixed earth station in Miami, Florida without Commission authorization, in apparent willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules. The *NAL* proposed a forfeiture of \$15,000 against Towerstream.

10. In light of Towerstream’s response to the LOI and the outstanding *NAL*, the parties entered into negotiations to resolve the various matters under investigation.

III. TERMS OF AGREEMENT

11. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

12. **Jurisdiction.** Towerstream agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

14. **Termination of Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigations and cancel the *NAL*. In consideration for the termination of the Investigations

¹⁶ Towerstream subsequently filed an application for Commission consent to the assignment of licenses from Color Broadband to Towerstream and let the transfer of control application expire. See Jan. 12, 2012 Transfer of Control Application; Form 603, File No. 0005175767 (filed May 1, 2012) (May 1, 2012 Assignment Application). In the assignment application, Towerstream appropriately represented in response to Question No. 7(a), that the transaction had already occurred.

¹⁷ See Letter from Gary Schonman, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Arthur G. Giftakis, VP Engineering and Operations, Towerstream, Corporation, (Aug. 21, 2012) (LOI).

¹⁸ See LOI Response at 7-8, <http://ir.towerstream.com/releasedetail.cfm?ReleaseID=460646>, <http://ir.towerstream.com/releasedetail.cfm?ReleaseID=537426>, <http://ir.towerstream.com/releasedetail.cfm?ReleaseID=579210>. See also ULS File Nos. 0004235067, 0004544254, 0004773922.

and cancellation of the *NAL*, Towerstream agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Towerstream concerning the matters that were the subject of the Investigations. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Towerstream with respect to Towerstream's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

15. **Compliance Officer.** Within sixty (60) calendar days after the Effective Date, Towerstream shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Towerstream complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, Towerstream agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws, including Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall implement the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Towerstream shall establish Operating Procedures that all Covered Employees shall follow to help ensure Towerstream's compliance with the Commission's Rules. The Compliance Manual shall explain the Communications Laws that apply to Towerstream, including Section 1.65 of the Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure Towerstream's compliance with Sections 1.948, 1.17, and 25.102(a) of the Rules. Towerstream shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Communications Laws that apply to Towerstream, including Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure Towerstream's compliance with Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules. Towerstream shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Towerstream shall distribute any revisions to the Compliance Manual promptly to Covered Employees. The Compliance Manual shall require personnel, including Covered Employees, to contact Towerstream's Compliance Officer and, if appropriate, regulatory legal counsel with any questions

or concerns that arise with respect to Towerstream's obligations under Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules.

- (c) **Compliance Training Program.** Towerstream shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Towerstream's obligation to report any noncompliance with Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time thereafter shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Towerstream shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

17. **Reporting Noncompliance.** Towerstream shall report any noncompliance with Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Towerstream has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Towerstream has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Gary Schonman at Gary.Schonman@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov. The reporting obligations set forth in this paragraph shall expire thirty-six (36) months after the Effective Date.

18. **Compliance Reports.** Towerstream shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Towerstream's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and Sections 301 and 310(d) of Act and Sections 1.948, 1.17, and 25.102(a) of the Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Towerstream, stating that the Compliance Officer has personal knowledge that Towerstream (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the

Rules¹⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Towerstream, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Towerstream has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Towerstream has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Gary Schonman at Gary.Schonman.fcc.gov, and to Pam Slipakoff at Pam.Slipakoff@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date

20. **Voluntary Contribution.** Towerstream agrees that it will make a voluntary contribution to the United States Treasury in the amount seventy thousand dollars (\$70,000) within thirty (30) calendar days after the Effective Date. Towerstream shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Gary Schonman at Gary.Schonman@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions regarding the form of payment:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

¹⁹ 47 C.F.R. § 1.16.

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. **Waivers.** Towerstream waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. Towerstream shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Towerstream nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Towerstream shall waive any statutory right to a trial *de novo*. Towerstream hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²¹ relating to the matters addressed in this Consent Decree.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Towerstream does not expressly consent) that provision will be superseded by such Commission rule or order.

24. **Successors and Assigns.** Towerstream agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws. The Parties also agree that this Consent Decree does not constitute an admission of liability by Towerstream or a concession by the Commission that its investigation was not well-founded.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

²¹ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

28. **Authorized Representative.** The individual signing this Consent Decree on behalf of Towerstream represents and warrants that he is authorized by Towerstream to execute this Consent Decree and to bind Towerstream to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

29. **Counterparts.** This Consent Decree may be signed in counterpart and may be delivered by facsimile or electronic delivery. Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Jeffrey M. Thompson
CEO
Towerstream Corporation

Date